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**PATENTS**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of: )

**MERTZ, Jr., Kenneth A.** )

5 Serial No.: **10/604,880** ) Art Unit: **3652**

Filed: **August 23, 2003** ) Examiner: **KRAMER, Dean J.**

Date: **April 21, 2006** )

**PETITION REQUESTING WITHDRAWAL OF HOLDING OF ABANDONMENT DATED**

10 **APRIL 4, 2006**

**AND**

**RESPONSE TO OFFICE ACTION RECEIVED APRIL 15, 2006 -- AMENDMENT**

Sir:

15 In response to the Notice of Abandonment, applicant hereby petitions the  
Director of the U.S. Patent and Trademark Office pursuant to 37 C.F.R. 1.181(a)  
requesting withdrawal of the holding of abandonment on the ground that the Office  
Action was never received. MPEP 711.03(c)(I)(A).

20 Applicant learned of the putatively pending Office Action during a check of the  
private PAIR web site on or about March 31, 2006. Practitioner regularly checks the  
private PAIR web site for activity on all dockets identified with his customer number. No  
activity had been seen on PAIR for applicant's application since the August 15, 2005  
"Response to Election / Restriction Filed" notation. The file jacket for applicant, as well  
as adjacent files in the cabinet, and applicant's docket record were immediately  
25 searched, indicating no Office Action had been received corresponding to the date of the  
putative Office Action (August 26, 2005). A copy of applicant's docket record is attached

as Exhibit A, verifying that no entries were made after August 15, 2005, when applicant's restriction election was filed. (See arrow, Exhibit A, p.2.)

Examiner Kramer was contacted by telephone by practitioner on April 4, 2006. Examiner confirmed PTO records indicating that a paper Office Action was supposed to have been mailed on August 26, 2005. Notice of Abandonment was mailed from the PTO the same day and received by practitioner on April 7, 2006.

Applicant never received the Office Action until downloading it from the private PAIR web site on April 15, 2006. Thus, in accordance with MPEP 711.03(c)(I)(A), applicant hereby requests withdrawal of the holding of abandonment for good cause shown, and start of the statutory period for response on the date of applicant's receipt of the Office Action, April 15, 2006.

In furtherance of prosecution of the subject application without delay, a complete response to the Office Action follows.

Sincerely,

15

  
Jonathan R. Smith

Reg. No. 47098



Exhibit A p.1

APPLICANT (if highlighted, applicant action required within 60 days) Mertz	docket no. MER.0101	abandonment warning shows aband if grace d/I exceeded, warn if 1 mo left, fee if nongrace in 2 wks	appl. type	provisional filing date	date prov. filing rec'pt mailed	provisional exp. Date	non-prov. filing date	23-Aug-03	16-Sep-03	date non-prov. filing rec'pt mailed by PTO	client notified of filing rec'pt? y or clear	filed electron- ically? y or clear	nonpub. Request filed ("y") or rescinded (date) or clear if not filed	1st office action date	28-Jun-05	1st OA respon- se time (mos.) (default is 3)	1	client notified of IDS req'mt? y or clear	y
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IDS due w/o fee	date IDS filed, if any	response to 1st OA due (red on wht means caution: resp. not yet entered by PTO)	1st OA response sent	1st OA response entered by PTO	2nd office action date	2nd OA response time (mos.) (default is 3)	2nd OA caution: resp. not yet entered by PTO	2nd OA response sent	2nd OA response entered by PTO	3rd office action date	3rd OA response time (mos.) (default is 3)	response to 3OA due (red on wht means caution: resp. not yet entered by PTO)	3rd OA response sent	3rd OA response entered by PTO
	07-Oct-03		11-Aug-05	15-Aug-05										



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4th office action date	4th OA response time (mos.) (default is 3)	response to 4OA due (red on wht means caution: resp. not yet entered by PTO)	4th OA response sent	4th OA response entered by PTO	foreign filing D/L based on earliest priority claim	client notified of foreign filing options/ publication req'ments? y or clear will show yellow if today is within the 90 days of either the d/l or the pub date	client chooses not to foreign file (or application is a continuation) by default	D/L to rescind nonpub. request	expected publication date	actual publication date	date allowed	issue fee D/L	issue fee paid
						y							

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issue date	patent term adjustment (days)	notify client of OG offer for sale opportunity?	3.5 yr maint due date (date changes to end of grace pd and "FEE" appears. "FEE" chgs to "warning" one mo prior to end of	3.5 yr fee paid	7.5 yr maint due date	7.5 yr fee paid	11.5 yr maint due date	11.5 yr fee paid	patent expiration date	patent no.	PCT priority date (normally US nonprov. filing date. CAUTION)	PCT request filing date (fill in on rows for PCT and US apps.)	PCT fee payment deadline (highlighted until paid)	PCT fee paid date
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PCT designation confirm D/L	PCT designation confirm date	PCT search report date	PCT amendment due (if needed)	PCT amendment filed	PCT ch. II demand due (if desired)	PCT ch. II demand date	PCT 1st written opinion report date	PCT written opinion comments due	PCT written opinion comments filed	PCT nat'l stage D/L (CAUTION)	PCT nat'l stage filing date	misc. deadline (enter date if an aband. d/l, otherwise enter comment only)	abandoned by client (y), withdrawn from case (date), or expressly abandoned (date)	nonprov. appl. No.
														10/604,880

EFS/PAIR	
confirmation	
no.	1879

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